Anatolia as purely geographical in the House of Lords as in the Supreme Court of Pennsylvania.

The names of stations upon lines of railroad usually become the names of incorporated towns and cities, and are thus invested with a geographical signification. They are generally selected by some official of the railroad company, and the selection confirmed by use.

Under the law as laid down by the principal case, it is practicable for an enterprising president or superintendent to destroy, by a judicious selection of names, the validity of the most famous and valuable trade-marks in existence. Thus the first station might be called Lone Jack, where smoking tobacco could be manufactured; the second might be called Cocoaine, where cocoaine could be produced; the third, Solace, where chewing tobacco could be made; the fourth, Monogram, where whiskey could be distilled—and so on. If the road was located on Long Island or in New Jersey in proximity to commercial centres, the scheme would be very likely to succeed. The names would in the course of events become geographical, and the rights of the owners of the sundry trade-marks be divested accordingly.

That the decision announced in the principal case is calculated to be productive of unfortunate results seems to be obvious, when its nature and effect are carefully weighed. It can only be sustained upon the assumption that a trade-mark is not property, but an anomaly which can be neither defined nor protected. A recognition of the simple principles upon which the ownership of trade-marks rests, the principles which obtain wherever there is a common-law ownership, would have inevitably led away from the conclusion arrived at, and toward that which comports alike with reason and authority.

ROWLAND COX.

Washington, D. C.

Supreme Court of Illinois.

MARGARET MARTIN ET AL. *v.* JANET ROBSON.

The statutes of Illinois having given a married woman the sole control of her property and earnings, free from any control or interference of the husband, the necessary operation of such statutes is to discharge the latter from any liability for the wife's torts committed during coverture out of his presence and without his participation.

THIS was an action against husband and wife for slander uttered by the latter.

The Acts of 1861 and 1869 (Sess. Laws 1861, 143, and of 1869, 255), give to the wife during coverture, the sole control of her separate estate and property acquired in good faith from any person other than her husband; and her own earnings for labor performed for any person other than her husband or minor children, with the right to use and possess the property and earnings, free from the control or interference of her husband.

The opinion of the court was delivered by

THORNTON, J.—Since the Acts of 1861 and 1869, is a husband liable for the torts of his wife, during coverture, committed when he is not present, and in which he, in no manner, participates?

In determining the intent, object and effect of these enactments, it will be interesting to place in juxtaposition the rights and duties, liabilities and disabilities of husband and wife incident to the marriage union as they existed at common law, and the changes made by the statutes.

At common law he had control almost absolute over her person; was entitled, as the result of the marriage, to her services and consequently to her earnings and to her goods and chattels; had the right to reduce her choses in action to possession during her life; could collect and enjoy the rents and profits of her real estate; and thus had dominion over her property and became the arbiter of her future.

She was in a condition of complete dependence; could not contract in her own name; was bound to obey him; and her legal existence was merged in that of her husband, so that they were termed and regarded as one person in law. As a necessary consequence, he was liable for the debts of the wife *dum sola*, and for her torts and frauds committed during coverture. If they were done in his presence, or by his procurement, he alone was liable; otherwise they must be jointly sued.

Now he cannot enjoy the profits of her real estate without her permission. He has no control over her separate personal property. It is not subject to his "disposal, control or interference." Language could not be more explicit. All her separate property is "*under her sole control, to be held, owned, possessed and enjoyed by her, the same as though she was sole and unmarried.*" He has no right to use or dispose of a horse or a cow without her consent. He can no longer interfere with her choses in action. They are under her sole control. The product of her labor is her exclusive property. She alone can sue for and enjoy it. Any suit for her earnings must be in her own name, and she may use and possess them free from the interference of her husband or his creditors. The language of the statute of 1869 is that "a married woman shall be entitled to receive, use and possess her own earnings, and sue for the same, in her own name, free from the interference of her husband." The words, "free from the inter-

ference of her husband," apply as well to the right to receive, use and possess, as to the right to sue for, her earnings. The right therefore to receive and use her own earnings uncontrolled by the husband, is conferred in express terms.

The practical enjoyment of this right presupposes the right to appropriate her own time. The right to take and possess the wages of labor must be accompanied with the right to labor.

If the husband can control these, the statute has conferred a barren right. If the wife can still only acquire earnings with his consent, then the statute was wholly unnecessary, for she might have done this prior to its enactment. The clear intent of the statute is, not alone to give to the wife the right to accept and use her earnings, but the right to labor, and thus acquire them.

The intention of the Legislature to abrogate the common-law rule, to a great degree, that husband and wife were one person; and to give to the latter the right to control her own time, to manage her separate property, and contract with reference to it, is plainly indicated by these statutes. While they do not expressly repeal the common-law rule, that the husband is liable for the torts of the wife, they have made such modification of his rights and her disabilities as wholly to remove the reason for the liability. The rights acquired by the husband by virtue of the marriage have almost all been taken away; and the disabilities of the wife have nearly all been removed. She now controls her own estate entirely, except that, by construction of the courts, she cannot convey her real estate without her husband. This, however, is solely for her protection, and to prevent the squandering of the estate. He has now only a modified tenancy by the curtesy, dependent upon a contingency, and no estate vests during the life of the wife. This is rather a shadowy estate. It is an interest which may possibly ripen into something tangible in the uncertain future. Previous to the Act of 1861, it could be sold on execution against the husband; now the wife has the sole control of her real estate during her life, and the husband has no interest until her death. She must sue alone for breach of covenant in a deed to her. This estate, at best, is now a bare possibility: *Cole* v. *Van Ripen*, 44 Ill. 88; *Beach* v. *Miller*, 51 Id. 206. A liability which has for its consideration rights conferred, should no longer exist when the consideration has failed. If the relations of husband and wife have been so changed as to deprive him of all right

to her property and to the control of her person and her time, every principle of right would be violated to hold him still responsible for her conduct. If she is emancipated, he should no longer be enslaved.

For the policy and wisdom of the legislation which has effected a change so radical the Legislature alone is responsible.

The courts must guard against a construction, which might prove mischievous, and result in a practical divorcement of man and wife, if such construction can be avoided. In *Cole* v. *Van Ripen*, *supra*, this court said that the Legislature never could have intended by the enactment of 1861 to loosen the bonds of matrimony, or to enable the wife at pleasure to effectuate a divorce *a mensa et thoro;* or to confer the power to restrict the husband to the use of a particular chair, or to forbid him to take a book from her library without her permission. We shall not insist that such unwife-like conduct can ever be justified since the law of 1869.

The inquiry is therefore pertinent, what is left of the nuptial contract? What duties and obligations still exist? As the result of the marriage vow, and as a party of the contract, the wife is still bound to love and cherish the husband, and to obey him in all reasonable demands not inconsistent with the exercise of her legal rights, to treat him with respect, and regard him at least as her equal; and he is alike bound to protect and maintain her, unless she should neglect wholly her marital duties, as imposed by the common law, or assume a position to prevent their performance, and thus deprive him of her society, mar the beauty of married life, and disregard the household good. These duties and obligations upon husband and wife were not the result of the arrangement of their property at common law, but of the contract of marriage and the relation thereby created. By the marriage she became one of his family, and he was bound to provide her a home and necessaries there, but not elsewhere. He must furnish her with necessaries from a principle of duty and justice: 2 Kent Com. 148. "The duties of the wife while cohabiting with her husband, form the consideration of his liability for her necessaries:" *McCutchen* v. *McGahay*, 11 John. 281.. This doctrine is approved by KENT in his Commentaries, 2 vol. 146. The argument urged to maintain the responsibility of the husband for the torts of the wife, because he may still be bound to provide necessaries, is not appropriate. Upon the marriage, at common law, his assent to her contracts for

necessaries was presumed upon proof of cohabitation. If she eloped, though not with an adulterer, the husband was not chargeable even for necessaries. But elopement did not release him from liability for her debts *dum sola*, or for her torts. The rule at common law as to the liability for necessaries, is that if a man, without justifiable cause, turns away his wife, he is bound for her contracts for necessaries suitable to her degree and estate. If they live together, and he will not supply her, or the necessary means, she then can pledge his credit for necessaries strictly; but if he provides for her, he is not bound by her contracts, unless there is evidence to prove his assent. He is not bound by her contracts, unless they are made by his authority, or with his concurrence, except he makes no provision for her: *Montague* v. *Benedict*, 3 Barn. & Cress. 631; *Montague* v. *Espenesse*, 1 Car. & Payne 502; *Atkins* v. *Curwood*, 7 Car. & Payne 756. The plain reason for the obligation was the cohabitation or the right to enforce it, and the consequent right to her obedience and services. Even though she lived separate from him, supported her children and earned a salary, the party owing her had no right to pay her after notice from the husband not to do so. He could in such case sue for and recover the salary: *Glover* v. *Proprietors of Drury Lane*, 2 Chitty 117. Now, how changed. Her earnings, except for services she may render to him and his minor children, are her exclusive property, whether living apart from, or with, him. No principle is better settled at common law, than that the husband is not liable for necessaries furnished to the wife if she leaves him without any fault on his part. But he was responsible for her torts, until a dissolution of the marriage, even in case of separation. Where the husband and wife lived apart and she published a libel of a third person, he was held to be answerable, notwithstanding the separation: *Head* v. *Briscol & Wife*, 5 Car. & Payne 484. The foundation for the liability in the two cases is different. In the one case it was based upon cohabitation and the enjoyment of the society and services of the wife as a necessary consequence. In the other case it rested more particularly, if not exclusively, upon the fact that the husband became the absolute owner of her personal property, and had the right to receive the rents and profits of her real estate. It is also urged as a reason for the continued liability of the husband for the torts of the wife, that this obligation was imposed upon him at common

law, whether she was poor or wealthy, and that therefore the statutes have produced no different rule. If she did not enrich him with property, if she did not endow him with gold, she endowed him with a nobler gift, and a greater excellence. She enriched him with her society; advised and encouraged him, as one who had no separate interests; and freely gave to him her time, industry and skill. As a means of paying her debts and damages for her torts, her counsel and earnings might be as important as her accumulated property. The distinction between the liability of the husband for the contracts of the wife, before marriage, and for her torts during marriage, as for slander uttered by her alone, is too dim to be easily seen. He was made liable for her debts at the period of marriage, because the law gave to him all her personal estate in possession, and the power to recover her personal property in action: Bright's Hus. & Wife, 2d vol. p. 2.

He was bound to pay her indebtedness, because he adopted her and her circumstances together: Blackst. B. 1, 443. The law made him liable to the debts to which he took her subject, because he acquired an absolute interest in her personal property; had the receipt of the rents and profits of her real estate during coverture; and was entitled to whatever accrued to her by her industry or otherwise, during the same period: Steph. Nisi Prius, Vol. 1, p. 726. The reason for the liability, according to some authorities, is that by the marriage, the wife was deprived of the use and disposal of her property, and could acquire none by her industry, as her person and earnings belonged to the husband: Tyler on Infancy & Cov. sec. 216. The same author, after declaring the husband's liability for the debts and torts of the wife, says:—"The reason assigned for such liabilities, at common law, is that he was entitled to the rents and profits of the wife's real estate during coverture and to the absolute dominion over her personal property in possession: sec. 233. The common law was never guilty of the absurdity of imposing obligations so onerous without conferring corresponding rights. Hence besides the rights of property, the legal pre eminence was exclusively vested in the husband. He was answerable for her misbehavior, and hence had the right of restraint over her person: 1 Black., 444.

Lord Kaimes, in his sketches, says—"The man bears rule over his wife's person and conduct; she bears rule over his inclinations; he governs by law; she by persuasion." *In the matter of Coch-*

rane, 8 Dowl. P. C. 632, the wife was, upon the hearing of a writ of *habeas corpus*, restored to her husband, upon the principle that she was under his guardianship, and that the law entitled him "for the sake of both to protect her from the danger of unrestrained intercourse with the world by enforcing cohabitation and a common residence." So long as the husband was entitled to the property of the wife and to her industry, so long as he had power to direct and control her, and thus prevent her from the commission of torts, there was some reason for his liability. The reason has ceased. The ancient land-marks are gone. The maxims and authorities and adjudications of the past have faded away. The foundations hitherto deemed so essential for the preservation of the nuptial contract, and the maintenance of the marriage relation, are crumbling. The unity of husband and wife has been severed. They are now distinct persons, and may have separate legal estates, contracts, debts and injuries. To this conclusion have all the decisions of this court tended. So far as the separate personal property of the wife is concerned, she is now the same as a *feme sole*. She need not join her husband with her in a suit to recover it, or for trespass to it, as her rights only are affected and she must sue alone for any invasion of them. She may even prosecute a suit against her husband for any unlawful interference with her property contrary to her wishes: *Emerson* v. *Clayton*, 32 Ill. 493. The right of action, for personal injuries to the wife, is property; she may sue alone for the recovery of damages for such injuries, and the husband cannot, without her consent, release them: *C. B. & Q. R. R. Co.* v. *Dunn*, 52 Ill. 260. In the same case, it is said that she can maintain in her own name an action for slander of her character. If she alone is entitled to receive and appropriate to her own use damages recovered for slander of herself, she should answer for her slander of others. Until the law of 1869, this court adhered to the common-law rule that the husband was responsible for the debts of the wife contracted before marriage. It was repeatedly declared that the liability rested not only upon the fact that the husband, upon the marriage, became the owner of the wife's personal property when reduced to possession, and of a life estate in her realty, but upon the ground that he was entitled to the entire proceeds of her time and her labor; and that notwithstanding the law of 1861, he was still entitled to her earnings: *Conner* v. *Berry*, 46 Ill. 371; *McMurty* v. *Web-*

ster, 48 Id. 123. The last decision was made in 1868. Then followed the law of 1869. In the first adjudication under it, it was held that as she now owned separate property and enjoyed her own earnings, she must pay the costs incurred in attempting to maintain her rights: *Musgrave* v. *Musgrave*, 54 Ill. 186. In *Hawanth* v. *Warmser*, January Term 1871, the husband was declared to be discharged from his former liability to pay the debts of the wife contracted before marriage, by force of the legislation under consideration. A married woman may now be sued at law upon her contracts as to her separate property: *Cooksen* v. *Toole*, January Term 1871. She may now execute a valid lease of her separate real estate, without joining her husband and without his consent: *Parent* v. *Cullerand*, January Term 1872.

So diverse are the rights and interests, the duties, obligations and disabilities of husband and wife now from what they formerly were, that it would be most unreasonable to hold him still liable forher torts committed without his presence and without his consent or approbation. If he is not bound to pay her debts, why should he be responsible for her torts? When the groundwork is gone as to one it is gone as to the other, and the structure of the past must fall before the innovations of the present. She is now to a very great extent independent of him, and is clothed with rights and powers ample for her own protection; and so far as her separate property is concerned, is responsible for her debts and contracts with reference to it. They are not one as heretofore. They are one in name, and are bound by solemn contract, sanctioned by both divine and human law, to mutual respect; should be of the same household, and one in love and affection. But a line has been drawn between them, distinct and ineffaceable, except by legislative power. His legal supremacy is gone, and the sceptre has departed from him. She, on the contrary, can have her separate estate; can contract with reference to it; can sue and be sued at law upon the contracts thus made; can sue in her own name for injury to her person and slander of her character; and can enjoy the fruits of her time and labor, free from the control or interference of her husband. The chains of the past have been broken by the progression of the present, and she may now enter upon the stern conflicts of life untrammelled. She no longer clings to and depends upon man, but has the legal right and aspires to battle with him in the contests of the forum;

to outvie him in the healing art; to climb with him the steeps of fame; and to share with him in every occupation.

Her brain and hands and tongue are her own, and she should alone be responsible for slanders uttered by herself. Our opinion is, that the necessary operation of the statutes is to discharge the husband from his liability for the torts of the wife during coverture which he neither aided, advised nor countenanced.

The judgment is reversed, and the cause remanded.

SHELDON, J., dissenting.—I do not assent to the judicial repeal of the old rule of the law that the husband is liable for the torts of the wife committed during coverture. The assumed foundation of the rule is not all removed yet. A part of it, to wit, that whatever accrues to the wife by her labor belongs to the husband, for the most part yet remains.

The act which entitles a married woman to her earnings expressly denies to her any right to compensation for any labor performed for her husband or minor children. Of this description chiefly are the services of married women. Any other are exceptional. As to the husband's right to the services of his wife being one of the assigned reasons of his liability for her acts and obligations, see 2 Bac. A. 33, title *Baron and Feme*, (F); Tyler on Infancy and Coverture 333. But are these assumed reasons of the husband's liability, namely his rights in the wife's property and to her labor, the sole ground of the liability? Blackstone lays it down that "by marriage the husband and wife are one person in law. * * Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties and disabilities that either of them acquire by the marriage." 1 Black. Com. 441–42. "If the wife be indebted before marriage, the husband is bound afterwards to pay the debts; for he has adopted her and her circumstances together:" Id. 442–3. Because the legislature has seen fit to interfere with this unity of person, so far as to allow the wife the enjoyment of her separate property and to have her earnings to a limited extent, it does not follow that the courts should annul it in all other particulars. Were it a question before the body whose province it is to alter the law, reasons of public policy might suggest themselves to the legislative mind, to let the rule making the husband answerable for his wife's misbehavior remain undisturbed, as established in the wisdom of the common law.

One remedy which our law has provided for torts, is imprisonment on execution. But a wife is not liable to be imprisoned for a private wrong without her husband: 2 Kent Com. 149; 3 Black. Com. 413; Reeves Dom. Relations 145. This remedy then will be unavailing where a wife is a tortfeasor if the husband be exempted from liability.

As the acquisitions of the joint industry of husband and wife belong to the former, we may expect it to be the exception rather than the rule, where there will be found separate estate belonging to the wife, to be reached by execution. This will make the remedy by recovery of damages, by suit against the wife alone, of little worth. Thus the abrogation of the law in question leaves the party who may receive injuries at the hands of a married woman practically remediless. It will so be, that she in most instances may commit private wrongs with legal impunity, and wives will be made, as it were, licensed wrongdoers. A weakening effect will be produced in the respect of family government, which is a powerful aid to that of the state in the maintenance of civil order. There will no longer be the motive of pecuniary interest on the part of the husband to induce him to exercise a salutary influence in promoting good conduct in the wife, and in restraining her from the commission of wrongs. As bearing upon the subject in hand the following remarks of Lord Chancellor TALBOT in the case of *Heard* v. *Stamford*, 3 Peere Williams 410–11, are not unworthy of regard:—"I do not see how anything less than an Act of Parliament can alter the law. * * * If the law as it now stands be thought inconvenient, it will be a good reason for the legislature to alter it; but till that is done, what is law at present must take place." Enough of uncertainty is being brought into our laws by the regularly ordained law-making power in the exercise of its functions. The evil of the law's uncertainty is aggravated where the continuance of the ancient principles of the law is made dependent on mere judicial discretion

SCOTT and BREESE, JJ., concurred with SHELDON, J., in his dissent.

A consideration of the opinion of the court in the principal case will show the ground of the decision to be that although the Illinois statutes had not in terms removed the husband's liability for the torts of the wife committed during coverture, yet they had so modified his rights and removed her disabilities, that

the reason of the rule of the husband's liability no longer existed, and the rule fell with its reason. In the language above: "A liability which has for its consideration rights conferred should no longer exist when the consideration has failed." The minority of the court, on the other hand, were of the opinion that the statutes in that state had only partially, if at all, destroyed the unity of person between husband and wife, and had left enough of it untouched to form a reason for the continuance of the old rule; and they spoke of the decision of the court as a "judicial repeal of the old rule of the law that the husband is liable for the torts of the wife committed during coverture."

So strong a dissent on the part of three members of the court, expressed, it may at least be said, with rather more legal precision than the opinion of the court, is entitled to much consideration, especially as it has on its side, as is believed, both the weight of authority and reason.

It is safe to say that the general tendency of the decisions upon married women's acts has been to restrict the operation of the acts rather than to extend them beyond the natural meaning of the language employed. This is especially true of the decisions under the New York and Pennsylvania acts, the pioneers of all the statutes on the subject of married women's property passed of late years by so many of the states. These acts are derogatory of the rules of the common law, and for that reason are to be strictly construed and not to be extended by implication beyond their natural import. This is in accordance with a general rule for the construction of statutes applicable to all cases, for which we need hardly cite authorities. Says KENT: "It is not to be presumed that the legislature intended to make any innovation upon the common law further than the case absolutely required:" 1 Comm. 464; and in Dwarris on Stat. 185, it is said: The law rather infers that the act did *not* intend to make any alteration, *other* than what is specified, and *besides* what has been plainly pronounced; for if the Parliament had had that design, it is naturally said, they would have expressed it. See also *Mayo* v. *Wilson*, 1 N. H. 55; *How* v. *Peckham*, 6 How. P. R. 229; *Van Horne* v. *Dorrance*, 2 Dall. 316; *Rice* v. *M. & N. W. R. R. Co.*, 1 Blatch. 359; *Talbot* v. *Simpson*, Pet. C. C. R. 188; *Bear's Adm'r.* v. *Bear*, 33 Pa. 527, where STRONG, J., says: "All statutes changing the common law are not, in connection with the married woman's act of that state, to be extended by construction." So far as these statutes are intended to remedy a mischief existing at common law, they have been liberally construed to effect that purpose; but the mischief aimed at by these statutes is rather the hardship of subjecting the wife's separate estate to the husband's debts and taking from the wife the control and disposal of her own property, than any supposed hardship in imposing upon the husband a liability for the torts of the wife committed during coverture. In other words, the statutes had sought to remove the disabilities of the wife and not to change the rights or liabilities of the husband. The liability in question, arising most naturally from the relations that exist between husband and wife at common law, has its foundation, not in the fact that the husband becomes the possessor of his wife's property as is suggested in the principal case, but in the much more important principle of a unity of person upon which, says Blackstone, depend almost all their duties, rights and disabilities. To the same effect are all the authorities. (See those cited below.) It is equally well settled upon the authorities that the statutes have not had the effect of destroying the unity of person. See *Diver* v. *Diver*, 56 Pa. St.

109, per STRONG, J., and other cases below.

Whatever change in the marriage relation the future may bring forth, it is practically impossible in the great majority of cases, as society is now constituted, for the wife to acquire a separate estate by her own exertions, even in those states where the law secures to her her own earnings. The division of labor between the husband and wife that obtains at the present day, is such as to make the husband by law the sole owner of that which is in many, if not most cases, really the product of the joint labor of both husband and wife. To take from the husband all liability for the wife's torts committed during coverture, would be in most cases to give her entire immunity from punishment in such cases, and to leave any person who may be injured by her torts practically without redress.

In cases where the wife has a separate estate, it would seem to be the best rule to hold them both liable to an action for the wife's torts, with the proviso that, in case of judgment, execution shall first issue against the wife's estate; this is the rule in Pennsylvania and other states. Where both have property, that of the wrongdoer should first bear the penalty of the wrong, but in most cases there will be no redress for the wife's wrong except such as can be enforced against the husband, the head of the family.

As was said above, married women's acts being remedial of the common law, will be so construed as to suppress the mischief at which they were aimed, and will not be extended further than is necessary to accomplish that result. In *Diver* v. *Diver*, *supra*, the court said: "It need not be repeated that no greater effect is to be given to the Act of 1848 than its spirit and language intend. It is a remedial statute, and we construe it so as to suppress the mischief against which it was aimed, but not as altering the common law any further than is necessary to remove that mischief." In *Bear's Adm'r* v. *Bear*, 33 Pa. St. 527, it was held that the mischief aimed at by the legislature was the liability of the wife's separate estate for her husband's debts; and the court said: "Here was the mischief to be remedied, and the statute is the remedy provided. We are not at liberty, even if we have the disposition, to go beyond the spirit of the enactment." And similar language was used in *Pettit* v. *Fretz*, 33 Pa. St. 118. And the courts in that state have refused to construe the act as changing the rule of common law, that under a deed to a husband and wife the grantees each become seised of the entirety, holding *per tout et non per my*: *Diver* v. *Diver*, *supra*. And they have held that the wife can convey her lands only by joining in a deed with her husband: *Pettit* v. *Fretz*, 9 Casey 118 (on the ground that since the statute a married woman does not hold her property as a *feme sole*, but as a married woman), and that the wife cannot maintain an action of debt against her husband by her next friend, on a contract made during coverture: *Ritter* v. *Ritter*, 31 Pa. St. 396.

The same tendency not to extend these statutes by implication, may be observed in the New York cases. In *Perkins* v. *Perkins*, 62 Barb. 531 (1872), which was an action brought by a husband against his wife for services performed for her, there was a lengthy discussion of the proper method of construing these acts. The language of the court is as follows: "Except to the extent that the incapacity of the wife to contract has been removed by statute, the marriage relation in its oneness of unity remains as it was at common law. The new powers conferred by these statutes were in derogation of common law and are to be strictly construed: *Graham* v. *Van Wyck*, 14 Barb. 531 * * * The husband has had no new powers conferred upon him, nor has he

been released from any duties and obligation imposed upon him. His condition in this marriage relation is unchanged so far as regards its unity. * * * The recent statutes made *in her behalf*, not his, have to the extent expressed therein enfranchised *her* as to those rights, and as to those only. * * They were passed for *her* protection, not his. She has just such power as the statute expressly confers on her, no more. Nor has he any more. They have conferred none on him. They have released nothing to him. * * I feel bound to hold that the unity of person created by the marriage contract, has been no further severed than the statutes, in *express terms* or by *necessary implication*, have effected that purpose." See also *White* v. *Wager*, 25 N. Y. 329.

In *Cassin* v. *Delaney*, 38 N. Y. 178, an action for malicious prosecution, decided in 1868, the court said, by HUNT, C. J.: "The authorities are clear that when a tort or felony of any inferior degree is committed by the wife in the presence and by the direction of her husband, she is not personally liable," which ruling will at least serve to show that the courts have not departed materially from the old common-law rules in that state.

In *Tait* v. *Culbertson*, 57 Barb. 9 (1869), which was an action for libel, this subject was considered. The court first stated the rule of common law as to the husband's liability for his wife's torts, and then said that the rule must be considered as still in force in New York unless it could be shown to have been changed by statute, which, the court held, there was not the least pretext for assuming. They then show the changes made in that state by statute, which among other things allow a woman to enjoy her property as if *sole*, to engage in business on her own account, to charge her separate estate on her contracts, and to sue alone for injuries committed against her person or character; and finally say, "It is sufficient to say that there is no language of any statute general or special in its terms, from which this change of the common-law rule can be established." In *Baum* v. *Mullen*, 47 N. Y. 577, while holding that under the statutes of 1860 and 1862 the wife may be sued in all matters having relation to her personal estate, the court said, "The statute has not altered the common-law liability of the husband for the mere personal torts of his wife, though as to torts committed in the management of her separate estate she is liable the same as if she were unmarried." And in *Rowe* v. *Smith*, 55 Barb. 417 (1869), when the court held that under the statute a married woman could be sued alone for an injury done by her cattle, BALCOM, P. J., dissenting on the ground that the language of the statute was not strong enough to remove the husband's liability for his wife's torts, said, "The legislature must take another step to relieve the husband from liability for the torts of his wife, whether she commit them with her own hands or by allowing her cattle to trespass."

In *Kowing* v. *Manly*, 57 Barb. 483 (1868), the plaintiff had deposited bonds with the defendant subject to his written order; the wife of the plaintiff forged an order and obtained the bonds. In action for the value of the bonds it was held that although the defendant was liable for the value of the deposit, yet as the plaintiff was responsible for his wife's fraud to the defendant, he could not recover.

The court said in rendering their opinion: "This rule of the common law is not changed or affected by the legislation in this state giving married women the control of their property. While it relieves them from many of the disabilities formerly resulting from the married state, it does not discharge the husband from the liabilities which that relation imposed upon him for the torts of his

wife." The reversal of this case on appeal, 49 N. Y. 192 (1872), does not affect it as an authority in point, for the Court of Appeals held that the rule against circuity of actions did not apply to that case, because the defendants were liable to the plaintiff in an individual capacity, while his liability to them was in the capacity of a husband for the tort of his wife, which they held to be a defeasible as well as a joint liability.

In *Commonwealth* v. *Wood*, 97 Mass. 229 (1867), which, though not directly in point, may throw some light upon the subject, an indictment for keeping a brothel, the wife of the defendant owned the house, carried on the business and received all the profits, but the defendant lived with her and exercised various acts of control and management; he was held to be responsible for her offence. In delivering judgment the court said:—"It is contended that the recent legislation of this Commonwealth has made married women so far independent of their husbands as to release the defendant from responsibility for the conduct of his wife. * * * It is true that under our statutes she may carry on a separate trade on her own account. But it has not been decided how far this affects the husband's legal right to control her, nor is it necessary to decide it in this case. These provisions of the statute relate to legitimate business. * * They do not take away the husband's power to regulate his household so far as to prevent his wife from committing this offence or relieve him from responsibility if it is committed."

The question has since been set at rest in that state by the Act of May 23d 1871, which provides that the wife shall sue and be sued in actions of tort in the same manner as if sole, and that the husband shall not be liable to pay the judgment against her for damages. So in Connecticut the Act of August 1st 1872 has provided that a married woman may be sued as if sole for her torts committed without actual coercion, and that she alone shall be liable to pay the damages recovered in all such actions.

The case of *McQueen* v. *Fulgham*, 27 Texas 467, which was an action for slander, is directly in point. In that state the statutes provide that all property of the wife owned before marriage or acquired during coverture by gift, devise or descent shall be her separate property subject to the husband's management during coverture. The language of the court may be given at length:

"It is insisted however that the common-law doctrine upon this subject is abrogated in this state by our statutes regulating marital rights. With us the separate identity of the wife, with respect to her husband, is not merged in the husband. Her property is not vested in him by marriage. But the common-law rule holding the husband responsible for the wife's torts does not rest entirely upon the ground that he takes by marriage all of her personal property, and that she is presumed to have no separate estate. It rests perhaps mainly upon the supposition that her acts are the result of the superior will and influence of her husband. Owing to the intimate relation between husband and wife and to the nature of the control given him by law and social usage over her conduct and actions, it would be difficult if not impossible for the courts to determine when she had acted at her own instance, and when she was guided by his dictation. While our statutes are framed with the view of securing to the wife her separate property and of sedulously protecting her with reference to it against the recognised and controlling influence of her husband over her conduct, it would be a stretch of judicial authority to hold that the common-law responsibility attaching to him for the acts of his wife is by mere implication abolished."

We have not been able to discover any other cases in point. Those above cited seem however to be enough to show that the principal case is not in harmony with the decisions in the other states. It is at least exceedingly doubtful whether the well recognised principles laid down for the interpretation of statutes support the decision, which the minority of the court spoke of as a judicial repeal of the old rule of the common law, and which seems to be a clear encroachment upon the rights of the legislature. A sounder principle of decision was that adopted in *Ritter* v. *Ritter*, 31 Pa. St. 396, where the court deliver judgment in the following words: "We are asked to deduce the legislative intention to confer a right of action by the wife against her husband, from the provisions of our several Acts of Assembly; but it is a sufficient answer that no one of those acts expresses that intention. If the legislature meant that such action as this should be sustained, they had command of a very copious language in which to express their will. They have not done it, and, until they do, we will not infer it. When it is done, the consequences must rest with those who did it." F. RAWLE.

United States District Court. Eastern District of Pennsylvania. In Admiralty.

THE PENNSYLVANIA.

The rule of maritime law that a passenger who has no opportunity to leave a vessel in distress, cannot render a salvage service, may admit of a qualified exception where he has promoted her safety by an extraordinary and peculiar service which he was not compellable to render. But in admitting such an exception in favor of a passenger, the greatest caution is necessary, and especially so where he is of the nautical profession.

Where a passenger of the nautical profession who has rendered such service, afterwards assumed and exercised illegitimate authority over the vessel, though the circumstances were not such that he incurred an absolute forfeiture of the salvage compensation, its amount was nevertheless materially reduced by reason of such usurpation of authority.

THIS was a libel by Cornelius L. Brady against the steamer Pennsylvania for salvage.

During her voyage the Pennsylvania encountered a severe storm, during which at midnight she shipped a heavy sea that carried away her forward hatches and the bridge on which were the captain and first and second officers, all of whom were lost. The libellant, a competent navigator, who was on board as a passenger merely, assumed the command and retained it until the arrival of the vessel in port. The other facts sufficiently appear in the opinion.

C. M. Neal and *Rufus E. Shapley*, for libellant.

Morton P. Henry and *Cuyler*, for claimants.